

## **CLOUD PUBLIC REPORT DRAFT No. 2, 11/05/08**

*Based on CPRC discussion at the Regular Meeting of 10/22, the "Incident Summary" portion (Item III) was revised. The narrative now is text taken directly from the Fact Sheet, with minor technical edits to facilitate a narrative report.*

*Item IV, "Witness Accounts," was modified to better identify parties.*

*"Closing" was modified by one word.*

**Date of Incident:** October 8, 2006  
**Location:** 7973 Indiana Avenue  
**Decedent:** Douglas Steven Cloud  
**Involved Officers:** Nick Vazquez, Police Officer  
David Johansen, Police Officer

### **I. Preamble:**

The finding of the Community Police Review Commission ("Commission") as stated in this report is based solely on the information presented to the Commission by the CPRC investigator, deposition transcripts from a related civil action, and details obtained from the RPD criminal investigation case files.

The Commission reserves the ability to render a separate, modified, or additional finding based on its review of the Internal Affairs Administrative Investigation. Because the Administrative Investigation contains peace officer personnel information, it is considered confidential under State law. Any additional finding made by the Commission that is based on the administrative investigation would, therefore, be confidential and could not be made public.

### **II. Finding:**

By a vote of 7 to 0 (Brandriff, Ward absent), the Commission finds that the officers' deadly use of force was within policy (RPD Policy 4.30 – Use of Force Policy), based on the objective facts and circumstances that we have been able to determine through our investigation.

### **III. Incident Summary:**

On October 8, 2006, at 4:16 p.m., Officer Putnam was in front of Home Depot (HD) at 3323 Madison Street, issuing a citation for shoplifting (to a party otherwise unrelated to this incident). Inside Home Depot, cashier James Blake contacted a customer later identified as Douglas Cloud, scanned the paint sprayer that Cloud had in his cart, and asked Cloud how he intended to pay. Cloud grabbed the box and ran from the store. Blake began to slowly chase Cloud, yelling for him to stop.

Ofcr. Putnam observed a man, later identified as Cloud, carrying a large box, running from the inside of Home Depot out to the parking lot. Ofcr. Putnam saw an apparent Home Depot

employee wearing orange HD apron, apparently cashier James Blake, slowly chasing Cloud, yelling for Cloud to stop.

Additional persons, apparently customers, and Home Depot Loss Prevention employees, including Jason Nourse, began to also slowly chase Cloud. Cloud reached his parked car and placed the box inside the hatchback of his car.

Ofcr. Putnam saw the Loss Prevention employees and customers struggle with Cloud at a car later identified as Cloud's car. The persons appeared to be trying to detain Cloud.

Loss Prevention employee Mike Allan arrived at Cloud's car and attempted to get a Home Depot employee away from the struggle. James Taliaferro, one of the assisting customers, reached Cloud's car. Taliaferro opened the hatchback and removed the paint sprayer box.

Cloud broke free and entered his car. A man, later identified as Vincent Taliaferro, held onto the top of the driver's door window. As Cloud started backing his vehicle, the window shattered. Home Depot Loss Prevention employee Jason Nourse saw Cloud get punched two or three times in the head or face.

Cloud backed the car out at a high rate of speed. As Cloud's vehicle backed, James Taliaferro either stumbled and fell to the ground, or was knocked to the ground by the vehicle. The vehicle changed direction to forward. James Taliaferro lay on the ground in the direct path of Cloud's vehicle. It is undetermined whether Cloud intended to run over James Taliaferro, as witness observations are in conflict.

HD employee Jason Nourse dragged Taliaferro from in front of Cloud's car. Cloud sped from the parking, almost hitting people as he drove. Cloud left the parking lot northbound, and out onto Indiana.

Ofcr. Putnam broadcast a "211" (robbery) call on the radio, and provided the license plate, and suspect and vehicle description.

Customer Josh Reiff saw the parking lot events and then followed Cloud as he drove westbound on Indiana. Cloud was driving recklessly and was weaving in and out of traffic. Angel Munoz was driving eastbound on Indiana approaching Jefferson. Munoz saw Cloud's vehicle driving westbound at 55-65 mph. Munoz saw the vehicle swerve out of control, spin at least once, then strike the north curb of Indiana and a large red truck parked in front of the Acura dealership.

After striking the curb, Cloud's vehicle travelled over 100 feet, sliding along the curb, and then along the parkway. The vehicle struck a transformer box lid, then sheared off a small palm tree, then struck the pickup truck. The sheared-off tree trunk lodged under the rear of Cloud's car, preventing the rear wheels from gaining full traction. The vehicle was substantially damaged. To witness Angel Munoz, Cloud appeared to be unconscious or disoriented.

Acura employee Fred Cagle ran outside his office after hearing the crash. Cagle approached the crash and contacted Cloud. Cagle said Cloud appeared drunk or dazed, but he smelled no alcohol. Cagle saw a cut over Cloud's left eye.

Five to ten seconds later, the first RPD officers arrived. Partner Officers Vazquez and Stennett were first to arrive at the collision scene. Ofcr. Vazquez had heard the "211" radio call, so he

drew his Glock firearm as he approached the driver's side, behind the door. Ofcr. Stennett first approached the passenger side.

As Ofcr. Vazquez reached the left rear corner of the vehicle, Cloud turned his head toward Vazquez and made eye contact. Ofcr. Vazquez ordered Cloud to put up his hands and Cloud complied. Ofcr. Stennet came around the rear of Cloud's vehicle to the driver's side, next to Ofcr. Vazquez.

Ofcr. Stennet reached into the car in an attempt to grab Cloud and to pull him through the open window. Ofcr. Stennet was unable to control Cloud.

It is undetermined if the vehicle was running the entire time or if Cloud reached down and started the engine during the struggle.

Officer Johansen arrived at the car while Ofcr. Stennet was struggling with Cloud, and while the vehicle was running, with the rear wheels throwing dirt and debris. Ofcr. Johansen attempted to assist Ofcr. Stennet, but could not reach in due to limited room. Ofcr. Vazquez holstered his firearm and also briefly attempted to assist.

Ofcr. Vazquez saw Cloud turning the steering wheel side to side in attempt to free the car and Ofcr. Vazquez heard the engine revving loudly. Ofcr. Vazquez perceived the car coming loose from its position would pose a deadly threat to him and his fellow officers. Ofcr. Vazquez also saw Cloud reaching down toward the center area with his right hand and thought Cloud might be reaching for a gun.

Ofcr. Johansen saw Cloud reach down toward the center console area with his right hand and start to raise the right hand in a deliberate manner. Ofcr. Johansen said he thought Cloud was reaching for a gun.

Ofcr. Vazquez drew his firearm and fired once toward Cloud's upper torso. When Cloud did not react, Ofcr. Vazquez fired three or four more times at the upper torso. Cloud slumped over. At about the same time, Ofcr. Johansen drew his firearm and fired once at Cloud's upper torso. Ofcr. Johansen heard Ofcr. Vazquez also fire, even before Ofcr. Johansen did.

Approximately 20 seconds elapsed from the time the first RPD officer advised "we got the vehicle," until an officer advised, "shots fired." No weapon or object was recovered from Cloud or his vehicle. Cloud was subsequently confirmed as deceased by personnel from American Medical Response.

The Riverside County Coroner determined the cause of death to be multiple gunshot wounds. The coroner noted that the lower extremities were "atraumatic" at the time of autopsy, and no wounds consistent with Cloud's legs being stuck in the car were discovered. Five gunshot entrance wounds were identified: left neck, left tip of the shoulder, left lateral neck, left side of larynx, and right chest. Blood toxicology examination revealed the presence of amphetamines (stimulant) and diphenhydramine (antihistamine) in Cloud's blood.

#### **IV. Witness Accounts:**

Below is a summary of statements from the Criminal Investigation Book for those seven (7) witnesses who specifically commented on whether the car was running prior to the officers' arrival, or whether Cloud started the car after officers' arrival. The statements are not all in agreement. Three (3) of four (4) civilian witnesses report the car started after the officers' arrived; two (2) of three (3) officers report the car was running when officers arrived. (Multiple other witnesses comment that the car was running at some point, but did not make a distinction about the car's status when the officers made contact.)

Witness Bryan Stanfill, a Chrysler dealership employee, said he was standing outside and witnessed the vehicle's crash. Stanfill said as officers arrived, they told him to back away. Stanfill heard the car's engine rev loudly, and then officer's surrounded the vehicle.

Witness Angel Munoz, in his vehicle, had "pulled up to the area of the collision" before police arrived. Witness Angel Munoz stated "the suspect vehicle was turned off, but when the officers approached he heard the suspect vehicle turn on and the motor rev very loudly as if S/Cloud was trying to get away." Munoz "heard the suspect vehicle starting up and saw the wheels spinning as if the suspect was trying to drive away."

Witness Justin Leutz ran out from the Acura dealership office, and "heard a grinding noise as if the suspect was trying to start the car again and then heard tires screeching."

Witness Juan Dominguez was working in Acura when he heard the collision, and so he approached the scene. Dominguez saw officers approach the car and push Fred Cagle aside. The "vehicle started up and the tires began squealing."

The involved police officers also gave varying accounts when interviewed by RPD investigators.

##### **Interview of Officer Vazquez (V) by RPD Investigators (I)**

V: I saw the vehicle wasn't off, felt that I had better – a better angle on the suspect.

I: It was – it was running when you got there?

V: It was off.

I: It was off (?)

V: The vehicle was off.

##### **Additionally:**

V: And then at that point he, ah – he broke one of his hands free or something." But I – I saw him turn the – turn ignition keys on.

I: Okay

V: And then he – I saw him put his hands on the gear shift, move it down like in reverse.

I: Okay

##### **Interview of Officer Johansen (J) by RPD Investigators (I):**

J: And I saw, ah, Officer Stennett, (Brett Stennett) and, ah, (Nick Vazquez) running from their units which were west of the vehicle, towards the vehicle. So, you know, I'm – I'm heading to back them up, and, ah, I run towards the vehicle, from my vehicle. The vehicle's still running. The guy's revving the engine. You can hear it going, "Voom, voom."

Additionally:

I: Okay. Um, I just wanted to step back for a minute, when you – wh – when you came up to the vehicle, did you say that the vehicle was, um, revving the entire time that you were up there?

J: Yes. The entire time.

(Atty): Well, not in his presence, you mean?

I: That – that's what I - - that's what I mean, while – while you were coming up there, as far as you know, the – the vehicle was running the entire time?

J: Running and he was foot on the gas.

Interview of Officer Stennett (S), partner of Ofcr. Vazquez:

S: "Nick Vazquez was driving. He gets out of the car and approaches, um, the driver's side of [Cloud's] car. I'm in the passenger seat and I approached the passenger's side of the car. We both have our guns drawn. Um, look in the car, see the suspect, on person in the driver's seat. Um, we start giving commands, he's not complying. Um, he starts slamming on, um, the, ah, he tries accelerating his car. It's not going anywhere though, it's stuck."

Additionally:

I: Um, when you guys got there and pulled up to the car, do you remember if the car was running, was it off at the time?

S: You know I'm not sure. I think that – (unintelligible) I don't know if he had been, um, pressing on – it had to have been on. I think that – that – I think that it was still running and that, um, and when we approached the car, when Nick Vazquez approached the driver's side and I'm on the passenger's side, I think that just as soon as he saw us he started slamming on the accelerator.

Statements from the deposition transcripts are listed below:

Officer Johansen said he did not know if the car was on at the moment of his arrival to the car. Johansen said at some point shortly thereafter, he knew the car was running. He did not hear the car start up.

Officer Vazquez said that the car was off on his arrival. Vazquez said that after Cloud broke free of Officer Stennett's grasp, Cloud turned the ignition and started the car.

Witness Fred Cagle, who had the first contact with Cloud after the collision, said he did not recall any engine noise when he approached Cloud's car. Cagle said after the officers lost their grip of Cloud while attempting to pull him from the car, Cloud fell back into the car. Cagle then heard shifting gears and saw the tires spinning. Cagle did not hear the engine start.

Statements from Baker Street Group's investigation include Danny Lane, an Acura employee, who said he ran out to Cloud's vehicle immediately after the crash and could hear the engine running. (However, there is no mention of when officers arrived.)

**V. Applicable RPD Policy:**

RPD Use of Force Policy, RPD Policy & Procedures Manual, Section 4.30, pages 4.30-1 – 4.30-11.

**VI. Standard for Commission Finding:**

Preponderance of evidence.

**VII. Rationale for Finding:**

After careful review and deliberation of information provided by the CPRC investigator, deposition transcripts, and information included in RPD criminal investigation case files, the Commission found that the officers reasonably perceived a threat of death or great bodily harm from Mr. Cloud's actions of revving the engine, and turning the steering wheel from side to side, as the officers believed these actions were an attempt to free the car from the tree, and that the car could swing out and strike them due to their proximity to the vehicle.

**Closing:**

The Commission offers its empathy to the community members and City employees who were impacted by this tragic incident. Further, the Commission hopes that this incident does provide an opportunity to improve the ability of the RPD and the City to respond to similar dangerous and demanding situations, with safer outcome for all.